

STATEMENT BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

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by

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Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, on behalf of Secretary Cuomo, thank you for inviting us to provide our comments on S. 400, "the Native American Housing Assistance and Self-Determination Act Amendments of 1999."

It is a pleasure to appear before you once again, and I reiterate my appreciation for your continuing efforts to improve the housing conditions of American Indian and Alaska Native peoples. Although progress is being made to eradicate the housing problems experienced by Native American families residing on Indian reservations, on trust or restricted Indian lands and in Alaska Native villages, much more needs to be done.

At the outset, let me reaffirm the Department of Housing and Urban Development's strong support for the principle of government-to-government relations with Indian tribes. In the Executive Order on Consultation and Coordination with Indian Tribal Governments, President Clinton explained:

"Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights."

HUD is strongly committed to honoring these fundamental precepts in our work with American Indians and Alaska Natives.

Before I begin describing our analysis of S. 400, I would like to provide you with some background information on how the Department finalized the regulations implementing the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Pursuant to section 106(b)(2) of NAHASDA, Secretary Cuomo convened a negotiated rule-making committee, which was comprised of 58 members, 48 of them tribal leaders representing a geographically diverse cross-section of small, medium and large Federally-recognized Indian

tribes from all areas of Indian Country. There were also 10 Federal Government representatives. That Committee reached consensus, through a series of meetings during 1997, on all aspects of the regulations. I represented my tribe at these sessions and I can honestly say that it was one of the most exciting -- and most challenging -- experiences of my life. When we reached final consensus we felt that we had accomplished a historic undertaking, and I continue to believe that to this day.

As I began reviewing S. 400, I recognized that a number of its provisions were either substantially similar or identical to certain regulatory provisions that are currently contained in the NAHASDA final regulations (24 CFR Part 1000). Generally, in these instances it is the Department's position that there is no need to seek statutory revisions to existing law when the precise provisions, often in language identical to that of the regulations, already exists and represents both Departmental policy and the agreements reached by the negotiated rule-making committee. In these cases I will cross-reference the regulatory cite to assist the Committee in its subsequent deliberations.

Sec. 2. RESTRICTION ON WAIVER AUTHORITY.

The amendment would limit the Secretary's time, which is unrestricted under current law, to 90 days for waiver of the requirement to submit an Indian Housing Plan (IHP). To date, the Department has not waived this submission requirement for any recipient. We have no objection to changing the basis for the waiver from "circumstances beyond the control of the tribe" to "extreme circumstances beyond the control of the tribe," but the Department believes the current provision provides the appropriate time frame for the Secretary to exercise his discretion when making these decisions. We would further suggest that the standard be changed from "extreme" to "exigent," because "extreme" is too high a standard to meet for the exercise of the Secretary's discretionary authority.

Sec. 3. ORGANIZATIONAL CAPACITY; ASSISTANCE TO FAMILIES THAT ARE NOT LOW-INCOME.

Section 3(a) would require that an IHP contain additional information regarding the organization, management and financial controls of the recipient. This is important information that the Department already receives pursuant to section 102(c)(4)(K), with the exception of the key personnel and financial controls requirement. Accordingly, we suggest that subparagraph (K) be amended to add these provisions, rather than adding a new subparagraph (A).

Section 3(b) would require that an IHP contain evidence about the need to serve non low-income families with NAHASDA funds. The test for serving such families is already contained in section 201(b)(2) of NAHASDA and embodied in the regulation at 24 CFR 1000.110. The regulation, at 24 CFR 1000.110(a) - (f), provides a comprehensive framework and specific guidance on the limits and conditions for serving such families. It also imposes additional restrictions on the amount of grant funds that can be used for this purpose. Evidence about the need to serve each particular non low-income Indian family is not usually available at IHP

submission. To require it by statute is impractical and does not comport with our experience in reviewing IHPs.

Sec. 4. ELIMINATION OF WAIVER AUTHORITY FOR SMALL TRIBES.

This section would eliminate the authority of the Department to establish any separate IHP requirements for small tribes. The regulation, at 24 CFR 1000.222, imposes the same requirements on large and small tribes. The Department has no objection to repealing this subsection of NAHASDA.

Sec. 5. EXPANDED AUTHORITY TO REVIEW INDIAN HOUSING PLANS.

The amendment strikes the word "limited" ("The Secretary shall conduct a limited review") and also strikes the following sentence: "The Secretary shall have the discretion to review a plan only to the extent that the Secretary considers review is necessary." The Department does not read the amendment as expanding our authority to review an IHP because we do not view the current statutory language as a limitation of our review authority under section 103(c).

Sec. 6. OVERSIGHT.

Subsection (a) is an improvement over the current statutory provision. It would give the Department more flexibility in determining the appropriate remedies if the recipient failed to meet the requirements of section 205(a)(2).

Subsection (b), which contains proposed amendments to section 405 of NAHASDA regarding audits, is unnecessary because it is covered under the Single Audit Act, which applies by its own terms.

Sec. 7. ALLOCATION FORMULA.

The Department supports this amendment, which would change the existing single-year (fiscal year 1996) provision to the more equitable five-year average of modernization and operating subsidies previously allocated under the United States Housing Act of 1937, and exempt emergency modernization from that calculation.

Sec. 8. HEARING REQUIREMENT.

This section would provide new hearing requirements that essentially duplicate the existing regulatory provisions in 24 CFR 1000.538(b), but add a new hearing requirement with a time frame that is in contravention of the Department's uniform hearing requirements found at 24 CFR Part 26, subpart B. In 24 CFR 26.44 there is a requirement that a hearing be conducted within 90 days. To change the hearing requirement under NAHASDA to 60 days may not provide sufficient time for a respondent to conduct adequate discovery and related pre-hearing actions.

Sec. 9. PERFORMANCE AGREEMENT TIME LIMIT.

This section would alter the current regulatory provisions found in 24 CFR 1000.530 by mandating a statutory performance agreement, a remedy which is currently available to the Department, although not specified in statute. We believe the current statutory and regulatory framework is adequate, and it comports with the decisions reached by the negotiated rule-making committee.

Sec. 10. BLOCK GRANTS AND GUARANTEES NOT FEDERAL SUBSIDIES FOR LOW-INCOME HOUSING CREDIT.

This section would provide the same eligibility under the Internal Revenue Code for the use of NAHASDA funds as federally-subsidized funds for low-income housing tax credit purposes that is currently available under HUD's HOME Program. Indian tribes were formerly eligible to participate in the Indian HOME Program, which was repealed by NAHASDA. Former Indian HOME Program funding is considered when the Department calculates its annual budget request under NAHASDA for the Indian Housing Block Grant Program.

Sec. I 1. TECHNICAL AND CONFORMING AMENDMENTS.

Subsection (b) provides for a four-year annual authorization of appropriations in the amount of \$10 million for emergencies and disasters. The negotiated rule-making committee addressed this issue and decided that it did not have the statutory authority to do so, and therefore did not wish to provide set-asides of NAHASDA funding for this purpose. To the extent that such funding would reduce NAHASDA funds in any given fiscal year, we believe that this provision would contravene the Committee's decision.

Subsection (c) would repeal the subsidy layering requirement that NAHASDA grant recipients must certify to. NAHASDA originally designated the Department as the certifying entity, but this was changed to require a certification by the grant recipient in the NAHASDA technical amendments that were enacted as part of the Fiscal Year 1999 HUD Appropriations Act (see section 595(a) of Public Law 105276, approved Oct. 21, 1998). We believe that amendment fixed the problem and this provision should not be repealed.

Subsection (d) deals with the counting of Indian housing units formerly assisted under the Section 8 Program. The amendment would make statutory the requirement that these units be counted under the NAHASDA Indian Housing Block Grant allocation formula as formula current assisted stock, regardless of whether the recipient was operating a program similar to Section 8 with NAHASDA funds. The NAHASDA regulation, at 24 CFR 1000.318, provides a much more comprehensive allocation system that takes into account whether the grant recipient is now operating a program similar to the Section 8 Program. We consider it a better method for accounting for these units. It also represents the consensus of the negotiated rule-making committee.

This concludes my specific comments on the amendments. I would like to share with you

information about another activity that is occurring in the near future. On March 30, 1999, Secretary Cuomo will address Indian leaders at HUD's annual Native American Homeownership, Legal and Economic Development Summit. The Department will also conduct Listening Sessions on NAHASDA and consult with tribes on the issues that concern them, to include legislative matters. We would be pleased to provide the Committee with a report on the results of the Summit.

This concludes my prepared remarks. I would be happy to answer any questions you may have.